

**NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of:**

**INTERNATIONAL UNION OF ELEVATOR  
CONSTRUCTORS, LOCAL 3, AFL-CIO**

**Respondent,**

**Case 14-CD-156706**

**And;**

**OTIS ELEVATOR COMPANY,**

**Charging Party.**

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**CHARGING PARTY'S POST-HEARING BRIEF**

This brief is submitted to the National Labor Relations Board ("Board") by Otis Elevator Company ("Otis"), the Charging Party in Case No. 14-CD-156706. This dispute involves contested work jurisdiction under Section 10(k) of the Act. The overwhelming evidence presented by Otis establishes that the disputed work – bronze refinishing on elevators – is not work within the work jurisdiction of Respondent International Union of Elevator Constructors, Local 3, ("Local 3" or the "Union"). As set forth below, Local 3 did not provide testimony or evidence to establish that this work is, or has ever been, work within its jurisdiction. To the contrary, the evidence plainly demonstrates that the work of metals refinishing on elevators is routinely performed by a professional metals refinishing company, which in this case was Renaissance Metals, Inc. d/b/a Mid-America Metals ("MAM"). The parties have stipulated that MAM employees are not represented by the Union, nor otherwise represented. (B-Ex. 2)<sup>1</sup> As set forth below, the Board should order, under Section 10(k) of the Act, that the disputed work in

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<sup>1</sup> Citations to Exhibits admitted into evidence and presented by the Board are referred to herein as "B-Ex. \_\_\_"; exhibits admitted into evidence and presented by Otis are referred to herein as "O-Ex. \_\_\_"; and citations to the transcript are referenced by "Tr. \_\_\_."

this instance is not within the work jurisdiction of the Union and award it to the employees of MAM.

## **I. FACTUAL BACKGROUND**

On July 24, 2015, Otis filed an Unfair Labor Practice Charge alleging that Respondent Local 3 violated Section 8(b)(4)(i)(ii)(D) of the National Labor Relations Act (“Act”) by “threatening to strike and striking at the Lennox Hotel jobsite in St. Louis, Missouri with an object of forcing an employer to assign work to employees in a particular labor organization rather than employees of another labor organization, trade, class, or craft.” (B-Ex. 1A) The Regional Director set a hearing for August 18, 2015 under Section 10(k) of the Act for the parties to submit evidence regarding the work jurisdiction dispute alleged in this Charge. (B-Ex. 1D) The following summarizes the evidence and testimony presented at this hearing.

### **A. The Parties**

#### **1. Otis**

Otis is a corporation with its principal administrative office in Farmington, Connecticut. It is engaged in the manufacture, installation, service and repair of elevators throughout the United States. Otis has a local office in Brentwood, Missouri. During the preceding twelve months, Otis’ Missouri locations purchased goods and services of a value in excess of \$50,000 directly from points outside the State of Missouri. (B-Ex. 2)

Otis is member of the National Elevator Bargaining Association, a multi-employer association that has a collective-bargaining agreement with the IUEC, which negotiates for and on behalf of its affiliated local unions including Local 3. (Tr. 11) Other major member-employers of NEBA include KONE, Inc., ThyssenKrupp Elevator and Schindler Elevator Corporation. (Tr. 11; O-Ex. 3) A copy of the current NEBA Agreement between the NEBA member-employers and the Union has been presented to the Board in this proceeding. (O-Ex. 3)

## **2. Mid-America Metals**

MAM is a corporation with its principal offices located in Ozark, Missouri and a facility located in St. Louis, Missouri. (B-Ex. 2) MAM is engaged in the business of refinishing, polishing, and maintaining metal surfaces, as well as providing commercial and residential architectural metal, stone, and wood refinishing. (Tr. 15, 133) It provides these services in Missouri and throughout the country. (Tr. 133) During the past twelve months, a representative period, MAM purchased and received at its Missouri facilities goods valued in excess of \$50,000 directly from points outside the State of Missouri. (B-Ex. 2) The employees of MAM who actually perform refinishing of metal surfaces on elevator interiors in existing buildings are unrepresented. (Id.; B-Ex. 2)

## **3. Local 3**

Local 3 represents elevator constructor Mechanics, Apprentices, Helpers, and Assistant Mechanics in a geographic territory that includes St. Louis, Missouri. The Union is a labor organization within the meaning of Section 2(5) of the Act. At all material times, John Orr has held the position of Business Manager for Local 3 and is an agent of Local 3 within the meaning of Section 2(13) of the Act. Local 3 represents elevator constructor Mechanics, Assistant Mechanics, Helpers and Apprentices employed by Otis in the greater St. Louis area. (B-Ex. 2)

### **B. The Disputed Work**

The Notice of Hearing describes the disputed work as “The bronze refinishing work on the elevators at the Lennox Hotel in St. Louis, Missouri.” (B-Ex. 1D.) The parties stipulated that “[t]here is no agreed-on method for voluntary adjustment of the assignment of bronze refinishing work on the elevators at the Lennox Hotel in St. Louis that would bind all parties.” (B-Ex. 2)

Testimony and evidence presented at the hearing further detailed the nature of the disputed work. Otis has a contract with general contractor BSI Constructors (“BSI”), to modernize four elevators at the Lennox Hotel located at 827 Washington Avenue, St. Louis, Missouri (the “Lennox jobsite”). (Tr. 16-18; O-Ex. 1) These elevators include three passenger elevators and one service elevator.<sup>2</sup> (Tr. 17) The disputed work involves bronze refinishing of surfaces of the three passenger elevators.

Pursuant to the BSI-Otis Contract, Otis was not to perform the bronze refinishing work itself; rather it was required to hire a “professional metals refinishing contractor” to perform refinishing of bronze surfaces in the three passenger elevators at the Lennox jobsite. (Tr. 18-20; O-Ex. 1) (page 142100-18 of Specification labeled 13270; Section 2.7(a)(2)) The work to be contracted to a professional metals refinishing contractor is described in the BSI-Otis contract as follows: “The existing bronze front returns, entrance jambs, and headers shall be refinished by a professional metals refinishing contractor hired by [Otis] for this section.” (*Id.*; Tr. 20) Otis contracted with MAM, a professional metals refinishing company, to perform this bronze refinishing work on the elevators at the Lennox Hotel. (Tr. 15, 20) Otis had contracted with MAM to perform metal refinishing in several previous elevator modernization projects and MAM routinely performs metals refinishing work on elevators for NEBA member-employer elevator companies in the St. Louis area and around the country. (Tr. 16; O-Ex. 4) Otis accepted a bid dated June 17, 2015 from MAM to perform the following work at the Lennox jobsite:

Fill approximately four (4) holes in header plus clean and lacquer on satin finish bronze in these three (3) passenger elevator cabs each consisting of center opening doors, frames, front return panels, control panels and header plus deep clean thresholds....

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<sup>2</sup> There were four elevator cars, which are referred to herein as Elevator Nos. 1, 2, 3 and 4 respectively. Elevator No. 1 is a service car and required no bronze refinishing; Elevator Nos. 2, 3 and 4 are passenger cars for which bronze refinishing work was required under the BSI-Otis contract. (Tr. 23, 56).

All material adjacent to metal will be masked with protective covering where necessary.

Satin finish bronze will be stripped of existing coatings, cleaned, re-grained and highlighted to a satin finish and multiple coats of clear protective coating will be applied.

Upon completion of work, area will be cleaned and all debris accumulated during refinishing process will be removed.

(O-Ex. 2-A) MAM later determined that there were additional holes to be refilled in the bronze surfaces; as a result, it sent a revised bid for the work on July 21, 2015. The revised bid was accepted by Otis and required MAM to perform the same work noted above, except that it required MAM to “[f]ill approximately 17 holes in head control panel” rather than four holes. (Tr. 20-22, 139; O-Ex. 2A, 2B) This work was further described in the testimony of Brandon Donat, the Vice President of MAM, who is responsible for MAM’s Mid-West Region, which is based in St. Louis. Vice President Donat described the bronze surfaces that were refinished, including the frames, return panels, control panels, headers, and referenced photographs of the elevator cab interiors at the Lennox Hotel to illustrate these bronze surfaces. (Tr. 139-40; O-Ex. 5A-O)

The Union has claimed that it is entitled to perform this bronze refinishing work. (Tr. 289, 293).

**C. The Lennox Hotel Work Jurisdiction Dispute**

Otis employees represented by Local 3 began working at the Lennox jobsite in January 2015. (Tr. 22) By late April 2015, Otis had substantially completed two of the three passenger elevators (i.e., Elevator Nos. 3 and 4) and had turned those over to BSI. These elevators had passed inspection by April 2015 and were turned over for use by BSI for ongoing construction work at the Hotel. (Tr. 23-24) Bronze refinishing work is typically left until the end of a

modernization project so that the newly-refinished surface will not be scratched or otherwise damaged by continuing work on the elevators. (Tr. 23-24)

On or about July 9, 2015, Modernization Superintendent Steve Philipot spoke with Otis Employee Mechanic-in-Charge Ronnie Morris,<sup>3</sup> who was assigned to the Lennox jobsite. (Tr. 24) He directed Mechanic-in-Charge Morris to park and lock the Elevator Nos. 3 and 4 with the doors open to allow MAM to access the cars to perform bronze refinishing work after-hours on July 20, 2015. (Tr. 24-26) Opening the doors on the elevator car is necessary to allow MAM to perform work inside the elevator – to allow them access, Modernization Superintendent Philipot directed Mechanic-in-Charge Morris to “park the elevators at the first floor and leave the doors open and disconnect the power from the elevator and lock that power out.” (Tr. 25-26) He gave this direction because he had made arrangements for MAM to schedule the evening of July 20, 2015 as the first date to begin work on the bronze refinishing for Elevator Nos. 3 and 4. (Tr. 24, 27)

In response, Mechanic-in-Charge Morris first asked if MAM could perform their work during the day. (Tr. 26) When Modernization Superintendent Philipot told him that was not a possibility, Mechanic-in-Charge Morris said he did not think “Local 3 would allow him” to park and lock the cars with the doors open. (Tr. 27) Modernization Superintendent Philipot replied that it did not matter what Local 3 allowed him to do and that he needed to do it per his supervisor’s instruction. (Tr. 27)

Otis Supervisors, including Modernization Superintendent Philipot and Senior Regional Field Operations Manager Staggs (who has overseen hundreds of elevator modernization projects) have previously given this same directive to Otis Mechanics – to park and lock elevator

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<sup>3</sup> A Mechanic-in-Charge is the Mechanic who oversees the work of more than one “team” at a particular jobsite. In the elevator industry a team typically consists of a Mechanic (which is the classification for a journeyman in this industry) and an Apprentice, Assistant Mechanic or a Helper. (Tr. 93-94)

cars with the doors open – on numerous occasions for various reasons, including to allow companies to perform metals refinishing work on elevators. (Tr. 27-28; 98) Senior Regional Field Operations Manager Staggs has given this directive approximately 50 times on projects he has overseen. (Tr. 99) He and Modernization Superintendent Phlipot both testified that there is no safety concern associated with this task. (Tr. 34-35, 99) Otis Mechanics have also parked and locked elevator cars with the doors open to allow other tradespeople to perform other work, such as flooring and electrical work. (Tr. 27-29)

Shortly after his conversation with Mechanic-in-Charge Morris on or about July 9, 2015, Modernization Superintendent Phlipot received a telephone call from Local 3 Business Manager Orr, who said that Otis employees represented by Local 3 would not leave the elevator doors open to allow MAM to perform the refinishing of the bronze surfaces. Business Manager Orr said “he thought that it was Local 3’s work to do the refinishing” of the bronze. (Tr. 29) He then said that if employees can’t do that work, Otis should train them to do it. Modernization Superintendent Phlipot responded by questioning that elevator Mechanics were capable of performing bronze refinishing because he knew they were not trained to perform that work. (Tr. 30) In response Business Manager Orr said that “if they were not trained to do that type of work, then [Modernization Superintendent Phlipot] should train them to do that type of work.” (Tr. 30)

Rather than parking and locking Elevator Nos. 3 and 4 with the doors open as directed by Otis Superintendent Phlipot, Mechanic-in-Charge Morris and the Apprentice assigned to work with him, Gary Krawzik, notified Superintendent Phlipot on or about Monday, July 13, 2015 that they were resigning effective Friday, July 17, 2015 (the last work day before the date on which

MAM was to begin work and when the cars were supposed to be parked and locked with the doors open). They did resign effective that day. (Tr. 30-32)

On or about July 20, 2015, Otis Superintendent Phlipot telephoned Mechanic Matt Boyd, another Local 3-represented Otis Mechanic, and instructed him to park and lock Elevators No. 3 and 4 at the Lennox Hotel for refinishing. (Tr. 32-33) Mechanic Boyd responded that he did not think Local 3 would allow him to do that work. (Tr. 33)

Shortly thereafter, Local 3 Business Manager Orr telephoned Otis Superintendent Phlipot. (Tr. 33) Business Manager Orr said that the bronze refinishing work was Local 3's work and that he was going to direct Mechanic Boyd not to open the doors on elevators 3 and 4 as he had been instructed. (Tr. 33-34) Business Manager Orr reiterated that he would instruct Mechanic Boyd not to perform the directed work and also claimed that there was an unspecified safety issue that prevented employees from parking the cars with the doors open. (Tr. 34) Modernization Superintendent Phlipot disagreed that there was any such safety issue and informed Business Manager Orr that he had determined that there was no safety issue. (Tr. 34) Indeed, none of the Mechanics who were directed to park and lock elevator cars with the doors open had ever expressed any kind of safety concern. (Tr. 35) Local 3 Business Manager Orr said that we could resolve this issue if Otis paid a Local 3-represented employee to "stand by while the refinishing work was ... taking place." (Tr. 89) This means, effectively, that the employee would "stand by" and watch MAM perform the bronze refinishing work. (Tr. 89) Modernization Superintendent Phlipot did not agree to Local 3's demand.

Shortly after this telephone conversation between Modernization Superintendent Phlipot and Local 3 Business Manager Orr on July 20, 2015, Otis Mechanic Boyd called Modernization Superintendent Phlipot back and said he was in the position of either following the Union's



orders or Otis'; and that if he's fired by Otis he could find another job in the industry, but "if the Union fires him, then what is he going to do?" Mechanic Boyd said he would follow Local 3's directive to refuse to park and lock the elevators, and he did so. (Tr. 35) Otis employees failed to park and lock the elevator cars with the doors open by July 20, 2015, despite Modernization Superintendent Phlipot's direction to them. (Tr. 36; 73)

On or about July 21, 2015, Local 3 Business Manager Orr had a telephone conversation with Otis Senior Regional Field Operations Manager Staggs. This time, Business Manager Orr said that Local 3's dispute at the Lennox jobsite was not a safety issue, but was a "jurisdictional issue." He said the issue was about Local 3 being able to do the work of bronze refinishing. Business Manager Orr said that there was not any available individual represented by Local 3 to perform bronze refinishing and suggested that Otis have someone "stand by." (Tr. 102-04) Business Manager Orr did not claim that there was any safety concern. (Tr. 105) Business Manager Orr said that the work of bronze refinishing was the Union's work under Article IV of the NEBA Agreement and that he did not want other crafts doing bronze refinishing work on the elevators at the Lennox Hotel. (Tr. 106) When Senior Regional Field Operations Manager Staggs and Business Manager Orr discussed other crafts doing the work, Business Manager Orr stated, "I don't want anyone else performing that work inside those cabs. That's my work." (Tr. 102-03) Local 3 Business Manager Orr then confirmed to Senior Regional Field Operations Manager Staggs that he was directing Local 3 represented employees to refuse to park and lock the elevator cars with the doors open because Local 3 claimed the work of bronze refinishing. (Tr. 107)

## II. LEGAL ARGUMENT

### A. The Disputed Bronze Refinishing Work Should Be Awarded To Employees Of Mid-America Metals, Not Local 3, Under Section 10(k)

The record in this matter reveals that the work of bronze refinishing is not, and never has been, the work of Local 3-represented employees. MAM chose to complete this work using its trained workforce and wishes to continue assigning the work to those employees, not employees represented by Local 3. Bronze refinishing work is fundamentally different than the work performed by Local 3, and it requires different skills, training, materials and expertise. Bronze refinishing involves the use of chemicals, tools, equipment and skills that are unique to specialty companies – companies that have employees who are trained, for example, to know how to oxidize expensive bronze surfaces to achieve a desired coloring, and to use flammable and dangerous chemicals safely and effectively to refinish bronze surfaces. Elevator Mechanics, Assistant Mechanics, Helpers and Apprentices do not have the requisite training, skill and experience to perform this work, nor have they performed this work in the past.

The Union failed to present any evidence that it is entitled to or capable of performing bronze refinishing work. Rather than doing so, the Union chose to focus its presentation of evidence at the hearing on issues that are more relevant to establishing a violation of Section 8(b)(4)(D), an issue that is not the focus of the Board's inquiry in a Section 10(k) proceeding. See Local No. 5, International Union of Elevator Constructors, 310 N.L.R.B. 1189, 1191 n.4 (1993).

In contrast, Otis presented substantial testimony and evidence that bronze refinishing work on elevators is not, and has never been, the work of the Union. Numerous witnesses supported this conclusion with testimony that they know of no instance in which the Union has performed bronze refinishing work and that Local 3-represented employees are not trained to,

and cannot, perform that work. These witnesses include former Mechanics in the elevator industry, including one veteran of 36 years' experience in the elevator industry, and former Mechanics who have worked for Otis and other NEBA member-employers in the St. Louis area. The overwhelming evidence demonstrates that the work of bronze refinishing should not, and cannot, be awarded to Local 3-represented employees.

The following analysis demonstrates that, as a preliminary matter, Section 10(k) applies, and that the Board should award the bronze refinishing work to MAM employees.

**1. The Record Demonstrates “Reasonable Cause” To Establish A Violation Of Section 8(b)(4)(D)**

This is a work jurisdiction dispute before the Board pursuant to Section 10(k) of the Act. In this proceeding, the Board is not required to determine that a violation of Section 8(b)(4)(D) occurred.<sup>4</sup> Rather, to proceed to the merits of this dispute under Section 10(k), the Board only needs to find evidence supporting “reasonable cause” to believe that a violation of Section 8(b)(4)(D) occurred. See Local No. 5, International Union of Elevator Constructors, 310 N.L.R.B. 1189, 1191 n.4 (1993). This “reasonable cause” standard is a low burden that is easily met, even when there is conflicting evidence presented by the parties. See United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 562 (C&R Heating & Service Co.), 328 N.L.R.B. 1235 (1999) (“This reasonable cause standard is substantially lower than that required to establish that the statute has in fact been violated.”); International Union of Operating Engineers, Local 12, 331 N.L.R.B. 1669 (2000) (conflicting evidence, including denials by Union witnesses of unlawful threats of

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<sup>4</sup> Section 8(b)(4)(D) prohibits strikes, picketing, boycotts, threats, and coercion where an object is “forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class....”

work stoppage, did not mean that there was not “reasonable cause” to believe the Act had been violated).

The Union’s presentation of evidence at the hearing suggests that it has the futile hope of preventing Otis from meeting the low burden of showing “reasonable cause” by offering conflicting witness testimony regarding the purported reason that Local 3-represented employees refused to follow orders concerning the elevator cars at the Lennox Hotel. It is well established that conflicts in witness testimony regarding the underlying alleged violation of Section 8(b)(4)(D) do not prevent the Board from proceeding to issue work jurisdiction relief under Section 10(k). Id. at 1191 n.4 (Union denial of threats of picketing insufficient to prevent a finding of reasonable cause because “a conflict in testimony does not prevent the Board from proceeding under Section 10(k). . .”); Local Union 400, International Brotherhood of Electrical Workers, 285 N.L.R.B. 1149, 1150 (1987) (Union witnesses testimony that “picketing was for area standards” and not in furtherance of a work jurisdiction dispute was a mere conflict in testimony and incapable of preventing the Board from addressing the work jurisdiction dispute).

Otis clearly demonstrated more than the minimal showing of “reasonable cause” to believe that the Union violated Section 8(b)(4)(D). The testimony of Modernization Superintendent Steve Philipot and Senior Regional Field Operations Manager Jim Staggs included admissions to them by Local 3 Business Manager John Orr that he was directing Otis employees represented by the Union to refuse to follow Otis’ orders to park and lock Elevator Nos. 3 and 4 at the Lennox hotel with the doors open, and that he claimed he did so because he was claiming the bronze refinishing work in those elevator cars. (Tr. 29-30, 33-34, 102-04) In fact, it is undisputed that Local 3 Business Manager Orr claimed that the work of bronze

refinishing at the Lennox Hotel was “Local 3’s work.”<sup>5</sup> Indeed, the testimony of Local 3 Business Manager Orr and his repeated admissions to Modernization Superintendent Phlipot and Senior Regional Field Operations Manager Staggs support a finding of reasonable cause that the refusal to follow Modernization Superintendent Phlipot’s directives was for the object of directing the bronze refinishing work to Otis employees. See International Association of Bridge, Structural and Ornamental Iron Workers Local No. 563, 272 N.L.R.B. 1371, 1372 (1984) (finding reasonable cause, despite a conflict in testimony, and noting that the Union “declined to disclaim the work in dispute, asserting in the final analysis, ‘[i]t’s Iron Worker’s work, it’s as simple as that.’”)

The testimony of Modernization Superintendent Phlipot and Senior Regional Field Operations Manager Staggs is also corroborated by other undisputed facts presented at the hearing. Mechanic Boyd admitted on cross-examination that he had conversations with Business Manager Orr about the directive given by Modernization Superintendent Phlipot and that he thereafter decided the better option was to follow the Union’s directive, not Otis’ directive. (Tr. 35, 263-65) Mechanic Boyd also admitted that the Local 3 Union Hall told him that he could be personally liable for safety issues that may arise if elevator doors are left open and that he should not leave doors open. (Tr. 265) Union witnesses who claimed apprehension of “personal liability” admitted that “the Hall” was the only place they ever heard of it. (Tr. 265, 281) This type of threat of personal liability certainly supports a finding of reasonable cause of a violation

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<sup>5</sup> Business Manager Orr did not dispute that he made these remarks claiming the disputed bronze refinishing work – indeed, he remained adamant throughout the hearing that it is work within the Union’s work jurisdiction. Nonetheless, he claimed that Modernization Superintendent Steve Phlipot first raised the issue of whether the Union was claiming the bronze refinishing work in their discussions concerning the parking and locking of cars with the doors open at the Lennox Hotel. This testimony is not credible (and certainly not evidence that there is no “reasonable cause”), inasmuch as Modernization Superintendent Phlipot, in his entire career in the elevator industry, had never known the Union to have claimed the work of bronze refinishing nor is he aware of the Union being capable of performing it. It would be incredibly odd for Modernization Superintendent Phlipot to spontaneously raise this issue on his own and without any initial claim to the bronze refinishing work by Business Manager Orr.

of the Act by the Union. See Complete Auto Transit, Inc. v. Reis, 451 U.S. 401, 403 n.1 (1981) (noting that “[s]trike encouragement sometimes is explicit but more often is cryptic. A Union may employ subtle signals to convey the message to strike.”) Similarly, longtime (and now former) Otis Mechanic-in-Charge Ronnie Morris resigned effective the day before he was supposed to comply with Modernization Superintendent Phlipot’s directive to park and lock elevator cars with the doors open at the Lennox Hotel. His abrupt departure, the day before he was supposed to comply with Modernization Superintendent Phlipot’s directive, and his admission that “he did not think the Hall would allow” him to obey Modernization Superintendent Phlipot’s directive, clearly support a finding of reasonable cause to believe that Local 3 has violated Section 8(b)(4)(D).<sup>6</sup>

The Union’s presentation of evidence at the hearing suggests that it will argue that refusals to comply with Modernization Superintendent Phlipot’s instructions to park and lock the elevator cars with the doors open at the Lennox Hotel were not done with the object of forcing the assignment of the disputed bronze refinishing work to members of the Union – instead, they were based on “safety” or “liability” concerns of the Mechanics and other represented employees involved. Mechanic-in-Charge Morris and Mechanic Boyd testified that they were directed by Modernization Superintendent Phlipot to park and lock Elevator No. 2 with its doors open and that, because that elevator car had not been “inspected,” they had developed vague and unspecified safety and liability concerns about leaving the doors open, and that is what caused them to refuse the directive. These contentions are completely without merit. Otis employees

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<sup>6</sup> At the hearing, former Mechanic-in-Charge Morris testified that he resigned so that he could take a position with another employer that would allow him to remain “in-town,” meaning St. Louis, and would not have to travel. (Tr. 229) This explanation is not remotely capable of disrupting a finding of reasonable cause. At the time of his resignation, Otis offered him a position that would allow him to remain in St. Louis (to prevent him from leaving). In cross-examination, he initially denied that Otis had offered him this position, and then he recanted that testimony and admitted that the offer had been made. (Tr. 229) His real reason for resigning was not so that he could remain “in-town.”

are directed to and do park elevator cars and lock them with doors open in a variety of situations, including to allow work to be performed by other trades, including metals refinishing, flooring work, and electrical work in the elevator pit. (Tr. 27-29, 98-99) There is no safety concern.<sup>7</sup> When performed as directed by Otis trained personnel, there is no safety hazard created by this task. Neither Mechanic claimed a safety concern at the time of the directives. Instead, both cited directives from Local 3.

More importantly for purposes of the instant proceedings, any factual conflicts in testimony drummed up by Union witnesses concerning these purported safety or liability concerns as the motivation for the illegal work stoppage with respect to Elevator No. 2 are incapable of disturbing a finding that there is “reasonable cause” to believe that a violation of Section 8(b)(4)(D) occurred. The Union’s witnesses testimony, at most, conflicts with the testimony of Modernization Superintendent Philipot’s testimony that he instructed former Mechanic-in-Charge Morris and Mechanic Boyd to park and lock Elevator Nos. 3 and 4 with the doors open. Under Board precedent, this type of conflict in witness testimony is not sufficient evidence to show a lack of “reasonable cause” to believe that Section 8(b)(4)(D) has been violated.<sup>8</sup>

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<sup>7</sup> Indeed, when asked to identify the purported “safety” concerns, Union witnesses could only raise theoretical possibilities that “anything” might happen if the elevator doors were left open, and admitted that these concerns originated exclusively at the Union or, as it is sometimes referred, the “hall.” (Tr. 231, 263-65)

<sup>8</sup> It also conflicts with common sense and the order in which bronze refinishing is to be performed. Bronze refinishing is performed at the end of the elevator’s installation – when there is less risk that the refinished surfaces will be damaged by ongoing work on the elevator. It is undisputed that Elevator Nos. 3 and 4 were substantially complete at the time of the initial instruction to park cars with the doors open on or about July 9, 2015. It is also undisputed that Elevator No. 2 needed continued work before it could be turned over and that this work was still ongoing after Mechanic-in-Charge Morris resigned on July 17, 2015 and when his work was taken over by Mechanic Vincent Langendoerfer sometime thereafter. (Tr. 270) In other words, the bronze refinishing work, as a matter of common sense, would be performed on the substantially finished cars first – not on the one remaining car that had not yet been completed. This common sense fact further corroborates Modernization Superintendent Philipot’s testimony that his instruction was to park and lock Elevator Nos. 3 and 4 with the doors open on July 20, 2015 (not the unfinished Elevator No. 2). Nonetheless, this entire issue is, at most, a conflict in testimony - not evidence of a lack of “reasonable cause” to believe that Section 8(b)(4)(D) has been violated.

Having established that Section 10(k) clearly applies, the evidence presented at the hearing overwhelmingly demonstrates that the work of bronze refinishing is work to be awarded to employees of MAM, and not to the Union.

**B. The Evidence Overwhelmingly Supports Awarding Bronze Refinishing Work To Employees Of Mid-America Metals**

Section 10(k) requires an affirmative award of disputed work based on the Board's consideration of certain factors. N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, 364 U.S. 573 (1961). This jurisdictional determination is "an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case." Local No. 5, International Union of Elevator Constructors and Stuart Dean Co., Inc., 310 N.L.R.B. 1189, 1191 (1993). The Board has previously determined that the work of metal refinishing and scratch removal work on elevator interior surfaces should not be awarded to the IUEC in a dispute that originated in Local 5, IUEC in Philadelphia, Pennsylvania. Id. Common sense, and the evidence and testimony presented at the hearing, overwhelmingly supports that the same conclusion here: the Union should not be awarded the work of bronze refinishing.

**1. Certifications And Collective-Bargaining Agreements**

It is undisputed that MAM employees are not represented by a Union and are not covered by a collective bargaining agreement. (Tr. 140) Otis Mechanics, Assistant Mechanics, Helpers and Apprentices are represented by the Union and are covered by the NEBA Agreement.

Article IV of the NEBA Agreement specifies the work jurisdiction of the Union, providing that all work "specified" therein is to be performed exclusively by Elevator Mechanics, Apprentices, Helpers and Assistant Mechanics. It is an exclusive list of work that primarily involves mechanical and electrical work involved in the installation of elevators. Conspicuously absent from the list of specified work is any reference to refinishing bronze or



other elevator interior surfaces. Yet the Union has contended, through the testimony of Business Manager Orr, that Article IV, Paragraph 2 contains a provision that awards the work of bronze refinishing to the Union because it entitles the Union to perform the assembly of “all cabs complete.” (Tr. 289) Business Manager Orr also testified that he believes that Article VIII(a), which describes Modernization work, somehow confers on the Union a contractual right to perform bronze refinishing work. It does not. Nowhere in either of these Articles is there any mention of bronze refinishing or any metal refinishing work whatsoever. And these Articles clearly do not mean that the Union must do any and all work performed within an elevator cab – the work described in Article IV relates solely to “assembly” of the cab, not its architectural finish. In fact, the Board has previously considered this same language and determined that it did not cover the work of metal refinishing in elevators. Local 5, International Union of Elevator Constructors and Stuart-Dean Co., Inc., 310 N.L.R.B. 1189 (1993).<sup>9</sup> These provisions in the NEBA Agreement do not, and have never before been held to grant the Union jurisdiction to perform bronze refinishing on the interior of an elevator cab.

Business Manager Orr further testified that Otis should be required to use a “composite” crew, making reference to a provision in Article IV that permits the use of a composite crew that may include an Elevator Mechanic, Assistant Mechanic, Helper or Apprentice when an elevator company performs the drilling of a cylinder well for hydraulic elevators. (Tr. 293-94, 321-22) Article IV, Par. 4(b) states:

On any job where the Company subcontracts the sinking, drilling, boring or digging of cylinder wells for hydraulic lifts, hydraulic elevators or screw lifts, one Elevator Constructor Mechanic shall be employed by the Company to supervise and assist in any and/or all work related to sinking, drilling, boring or digging of the cylinder well including the installation of the casing whether its

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<sup>9</sup> Although this case interpreted language from a predecessor to the NEBA agreement, the pertinent language referred to in Article IV and Article XIII is unchanged.

sections be welded, screwed or riveted or by any other method joined.

There is no similar provision in the NEBA Agreement that permits “composite crew” use for bronze refinishing (or even assembly of a “cab complete”) – a fact which was admitted by Business Manager Orr. (Tr. 322) Business Manager Orr also admitted that, to his knowledge, Otis has not used a composite crew for any bronze refinishing jobs. (Tr. 318)

The NEBA Agreement does not award the work of bronze refinishing on elevators to the Union. Therefore, the factor of certifications and collective-bargaining agreements favors neither group.

## **2. Area Practice**

There is abundant record evidence that numerous elevator companies that are member-employers of NEBA routinely subcontract metal refinishing (including bronze refinishing) to specialty contractors such as MAM, Architectural Bronze, and Stuart-Dean, Inc. (O-Ex. 4) The Union does not appear to contest this longstanding area practice.

Modernization Superintendent Phlipot provided numerous examples of projects in which Otis had subcontracted with a metals refinishing professional company to perform metal refinishing on elevators. (Tr. 36-40) These projects included work at the following jobsites: Maritz, Inc., the University of Missouri Math Sciences Building, West Park One, Ellis Library at the University of Missouri, the University of Missouri Student Recreation Complex, Park Pacific, and Castle Park Apartments. Conversely, Modernization Superintendent Phlipot is unaware of any projects where Otis employees performed bronze refinishing work. (Tr. 43) Modernization Superintendent Phlipot, who previously worked in the elevator industry as an Apprentice and Mechanic as a member of Local 3, testified that he did not know of any example of the Union performing bronze refinishing work, nor did he ever perform it when he was in the

field. (Tr. 36, 43) As an Apprentice in Local 3, he also participated in the industry's Apprenticeship program, the National Elevator Industry Education Program ("NEIEP") and he confirmed that the program provides no instruction regarding metals refinishing. (Tr. 43)

Otis Senior Regional Field Operations Manager Staggs, who has 36 years' experience in the industry, does not recall any modernization job in which Otis' IUEC-represented employees performed metals refinishing for bronze or other similar metals refinishing work. (Tr. 110-11) He worked in the field starting as an Apprentice in 1979, became a Mechanic and later became a Mechanic-in-Charge and an Adjuster, both of which are bargaining-unit positions reserved for experienced Mechanics. (Tr. 92-93) Senior Regional Field Operations Manager Staggs testified that the work of bronze refinishing is not performed by members of the Union; it is performed by professionals who specialize in this type of work. In his entire career, he was aware of no job on which IUEC-represented employees performed metals refinishing for bronze or stainless steel or other metals. (Tr. 110-11) He personally worked on approximately 60 modernization jobs as a field employee and has overseen hundreds as a manager. (Tr. 92, 95) He has overseen approximately 50 jobs in which metal refinishing was performed and in each instance metal refinishing work on the elevators was subcontracted to a professional metals refinishing company, such as MAM. (Tr. 98, 110-11) Similarly, he is familiar with the NEIEP program and has worked as a NEIEP instructor, and confirmed that refinishing of bronze was not part of NEIEP training. (Tr. 96, 110)

The Board should also note the testimony of Andrew Lenzen, a Construction Manager for another NEBA member-employer, KONE, Inc. who is based in Olivette, Missouri, a suburb of St. Louis, and is responsible for overseeing construction and modernization projects for KONE in an area covering the same territory as Local 3. (Tr. 178-79) Construction Manager Lenzen,

whose father and grandfather both were members of the IUEC, is also a former Local 3 Mechanic. He currently has 20 Local 3-represented employees reporting to him. (Tr. 182) Construction Manager Lenzen testified that in his experience in the St. Louis area, metal refinishing is done exclusively by subcontractors to the elevator company, including companies such as MAM, Stuart Dean, and Architectural Bronze. (Tr. 192) KONE, like Otis, uses these companies when contracting for metal refinishing, and this work is not performed by KONE employees because they are not metals refinishers. (Tr. 193-94) In fact, KONE recently finished a project where MAM did metals refinishing at St. Louis Community College of Meramec and Florissant Valley. (Tr. 194) KONE also contracted with MAM earlier this year to perform stainless steel polishing at St. Louis Courtyard Marriott Downtown. (Tr. 195-96) In his entire 16 years' experience in Local 3, KONE Manager Lenzen has never heard any claim by Local 3 that it could perform bronze refinishing on elevators. (Tr. 194) He explained that it is "standard verbiage" in a general contract to require that a metals refinishing company be subcontracted to perform that work on elevators. (Tr. 195)

Consistent with the testimony of Otis Modernization Superintendent Phlipot, Otis Senior Regional Field Operations Manager Staggs, and KONE Construction Superintendent Lenzen, MAM Vice President Donat provided further substantial evidence of an area practice of subcontracting bronze and other metal refinishing work to MAM. Vice President Donat provided a document, in evidence as O-Ex. 4, which reflects recent metals refinishing work that MAM has performed under subcontracts with NEBA member-employers within Local 3's geographic jurisdiction during the past three years alone – a time frame coextensive with the current NEBA-IUEC collective-bargaining agreement. (Tr. 137; O-Ex. 4) The document

includes 24 separate jobsites within the past three years on which NEBA member-employers have contracted with MAM to perform metal refinishing work on elevators. (O-Ex. 4)

Despite the numerous instances of performing metals refinishing work on elevators, the first and only time that this work has been claimed by the Union was in the current dispute at the Lennox Hotel. (Tr. 138) The Union had never before challenged MAM's work at any other jobsite, and it did not approach MAM directly to indicate that it could or would perform this work at Lennox. (Tr. 155) Instead of contesting this longstanding area practice, Union Business Manager Orr testified that he was simply ignorant of it. He testified that he was not aware of metal refinishing work being subcontracted to metals refinishing companies, even though he routinely visited worksites and knew the location and work performed by members of Local 3 at each jobsite at which this work was being performed; and even though Local 3 has a standing requirement that its members report to Local 3 when and where they have been assigned to new jobsites, "when they're starting, who they are working with and what type of work it is. . ." (Tr. 313-17) Setting aside that this testimony strains credulity, it is not evidence of an area practice of the Union performing metal refinishing work. To the extent he claims that the Union is entitled to work on a "composite crew" to perform the disputed work, Business Manager Orr admitted on cross-examination that, to his knowledge, Otis had never used a composite crew on any bronze refinishing jobs in the past. (Tr. 318) And Business Manager Orr's proposal of a "composite crew" actually implies that the Union is incapable of performing the bronze refinishing work independently and simply wants its members to be placed alongside other employees who would actually do the disputed work in a form of featherbedding. There is simply no evidence of an area practice of the Union actually performing bronze refinishing.

Therefore, the factor of area practice overwhelmingly favors MAM employees.

### **3. Relative Skills**

MAM Vice President Donat described the skills necessary to perform metals refinishing. These skills include stripping lacquer coating and the removal of tarnish on the metal with dangerous chemicals. (Tr. 142) It is sometimes necessary, in metals refinishing, to select different corrosives such as acetic acid to scrub out tarnish to accomplish this task. (Tr. 144) It also is necessary to know how to oxidize bronze using chemicals to remove tarnish, and to give it the desired bright, shiny brass color. (Tr. 142-43) The chemicals and lacquer coatings have different additives that may be used for the desired appearance of the metal and in order to adhere to the particular metal being refinished. (Tr. 144) The work also includes stripping the lacquer coating on the metal and the removal of heavy scratches inside the elevator cab using drills and buffers. (Tr. 142) It includes use of tools such as drills with different size buffers and the use of chemical spray equipment, including HVLP sprayers, which is a high volume and low pressure system used to apply lacquer coating. (Tr. 143) The spraying of these chemicals requires safety equipment, including a full-face respirator whenever the chemicals are applied inside confined space. It may also require use of a half-face respirator, dust masks, gloves, eye protection, ear protection, earmuffs, and kneepads. (Tr. 143)

Performing bronze refinishing requires years of training and experience, as described by MAM Vice President Brandon Donat. (Tr. 142-48). MAM employees are required to go through a five-week training program before they are even considered an “Apprentice,” the entry-level position for new employees at MAM. (Tr. 145-46) The first four weeks of training for new employees is spent with a designated trainer and includes educational components and field practice work. The first two days are spent in the office and the remainder of the first four weeks is spent in the field. (Tr. 162) The training includes seven safety modules that trainees must complete before being cleared to work in the field. (Tr. 163) This safety training may

include training on ladders and scaffolding, slips and falls, flammable liquids, chemicals, responding to chemical spills and working with chemicals in confined spaces. (Tr. 148, 163) During the training in the field, the trainee could be observing and participating in metals refinishing on brass, for example, and would work through a checklist that gets the employee comfortable with all different types of metal refinishing, such as “mirror-finish” and “satin-finish” bronze, which can require completely different skills. (Tr. 164, 168)

The final week of the five-week training takes place in MAM’s Kansas City office, which is referred to as “MAM Tech.” This is a designated training area that is used for MAM training by MAM’s Senior Safety Specialist. (Tr. 146-47) There are mock elevators set up at the facility so that new employees can “take buffers and remove scratches on the elevator cab without fear of ruining the metal. . .” (Tr. 165) Finally, the new employees must take and pass a test to become an Apprentice and begin actually doing work in the field, although even then they are subject to constant Supervision by the Foreman or Master Foreman with whom they are assigned to work. (Tr. 145, 148-49)

MAM has four classifications of metal refinishing employees – one starts as an Apprentice and works to become a Foreman Trainee, and then a Foreman, and finally a Master Foreman. Otis Exhibit 6 is a copy of MAM’s “Advancement Program” which outlines this progress. (Tr. 146; O-Ex. 6) To progress from Apprentice to Foreman Trainee, one needs to complete at least 1500 hours per year minimum and 2000 hours per year recommended in field work, and complete certain educational requirements. (Tr. 147-48; O-Ex. 6) An Apprentice is also graded by the Operations Manager, who goes out into the field with the Apprentice and grades them based on “on their masking skills, their scratch removal skills, their spraying skills, their teardown skills” on a scale from one to three. (Tr. 148)

To progress from a Foreman Trainee to become a Foreman, one must complete 520 hours of work as a Foreman Trainee, which includes time spent alone (without having to supervise an Apprentice) running a refinishing job on one's own. (Tr. 149) It also requires additional training at MAM Tech in a "Foreman Class" and a quarterly "Specialty Class." (Tr. 149-50; O-Ex. 6) To progress from Apprentice to Foreman (when one can independently perform metals refinishing), it typically takes three to five years and there is approximately a twenty percent rate of employee turnover within the first year. (Tr. 150, 152)

In contrast to MAM, Apprentices in the elevator industry receive absolutely no training on bronze or other metals refinishing. Construction Manager Lenzen, until two weeks prior to the hearing, was a member of the Local 3 Joint Apprenticeship Committee ("JAC"), which is the governing body for NEIEP administration in Local 3. (Tr. 182) He is familiar with the current curriculum for the NEIEP program. (Tr. 183) This curriculum includes classroom education and on-the-job training for Apprentices. Apprentices proceed through the program, over the course of five years, at which point they may take the Mechanics' examination to become a Mechanic. (Tr. 184) The training is specific to elevators, and mainly covers mechanical and electrical training. (Tr. 184) The educational materials which are voluminous (Construction Manager Lenzen testified that the materials would fill two "banana crates") and cover the work necessary to become an elevator Mechanic. (Tr. 184-86) Throughout the NEIEP training, there is no education whatsoever on metal refinishing or the skills that MAM Vice President Donat testified were required to perform bronze refinishing work. (Tr. 187-90) There is no NEIEP training on re-graining metal or oxidizing bronze. (Tr. 187) There is no NEIEP training on the use of chemicals used in bronze refinishing – there is no NEIEP training on the use of acetone; acetic acid; or generally on chemicals used to refinish bronze or strip lacquer or re-apply lacquer.



(Tr. 187, 188). Nor was there NEIEP training on tools that MAM Vice President Donat testified were used in metals refinishing, such as HVLP sprayers. (Tr. 188) In fact, there is only one portion out of the entire NEIEP educational material that even remotely discusses cab interior work, and it provides no instruction or training on metals refinishing. It merely discusses the fact that one should be careful not to get cut on sharp edges on stainless steel or bronze metal.

(Tr. 188; O-Ex. 7) None of the witnesses called by Local 3 denied any of the foregoing facts.

Whatever inferences the Board may draw from the testimony of the Union's witness Gary Krawzik, that testimony cannot support a finding in the Union's favor.<sup>10</sup> Gary Krawzik entered the elevator industry in 1999 and yet he remains only a Second Year Apprentice. He testified that, for about a year from July of 2012 to July of 2013, he worked for an IUEC signatory company called Travertine Elevator that performed metal refinishing under a "portability agreement" that allowed it to do work in various locations around the country. (Tr. 235, 242-44) Apprentice Krawzik's testimony is noteworthy primarily because it demonstrates Local 3's apparent misapprehension of the disputed work involved in bronze refinishing. As he explained it, the process could be learned by looking "on the can" to read instructions. He described his training on the subject as follows: "I went to a paint store where they had different materials that they sold, the cab company sent me there, and they showed me the product, a salesman did a little demonstration, like they would do sort of like stain a carpet and refinish it, you know." (Tr. 237) Apprentice Krawzik, who has never taken the Mechanic's exam and never completed the NEIEP educational program, clearly misunderstands the nature of the disputed bronze refinishing work inasmuch as he compared it to refinishing a driveway: "They make it sound like industrial chemicals, but it was just like, you know, doing your driveway.

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<sup>10</sup> As an Apprentice, Mr. Krawzik could only work under the direction of a Mechanic, but no Mechanic corroborated his testimony.

Have you ever seen people that paint their driveway and then go with the gloss and the flakes and make it look nice. It's similar to that." (Tr. 245)

Apprentice Krawzik admitted he did not know the chemicals used to remove tarnish; he admitted that all he would do was what it said on "the box" and that he did not select or know what chemicals to use, but that "[s]omebody else phoned it into the paint store and you showed up." (Tr. 247-48) He further admitted that he could not compare the work and chemicals he claimed to have used with those used by MAM. (Tr. 249) And he freely admitted that he did not know how to re-grain surfaces (which was part of the scope of work for MAM at the Lennox Hotel): he testified that he "never had to re-grain on finishing bronze" and that he "only had to fix where scratches were on there. I've never had re-graining..." (Tr. 249-50)

Apprentice Krawzik's testimony also revealed that he had no understanding of the process of or the need for different methods of refinishing stainless steel with a satin, versus mirror, finish: "[T]he metal has the grain in it. That's the beauty of stainless. If you mess it up, you just sand down a little more." (Tr. 250) Apprentice Krawzik's testimony, which is the only<sup>11</sup> Union testimony that could remotely be interpreted as claiming the ability to perform metal refinishing work, confirms the Union's inability to perform the bronze refinishing work performed by MAM and that there is no area practice in favor of the Union on this issue. Indeed, if the process were as simple as looking on a can, or resurfacing a driveway, then companies like MAM, Stuart Dean and Architectural Bronze simply would not exist because the work would be so simple anyone could do it. Indeed, MAM Vice President Donat, who has observed Elevator Constructors on jobsites, testified that he was familiar with their work and that it would not assist

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<sup>11</sup> No witness who has completed the NEIEP educational program, achieved the status of Elevator Constructor Mechanic and/or worked as a Mechanic, including the three Mechanics called by the Union, claimed that he possessed the skills, training and experience to perform the work. Thus, Apprentice Krawzik's self-described skill-set must be described as atypical.

them in working at MAM. (Tr. 152) As he testified, “[t]hey’re two completely different skills. You’re talking about working on the outside of the elevator, the mechanical guts of the elevator, and we’re working on the architectural finish...” (Tr. 152)

Therefore, the factor of training overwhelmingly favors MAM employees.

#### **4. Company Preference And Past Practice**

MAM clearly prefers to continue to perform bronze refinishing work on elevators. MAM has assigned the disputed work to its unrepresented employees and is satisfied with their work. It has used its unrepresented employees to perform similar work at numerous jobsites in the St. Louis area and around the country. (O-Ex. 4) MAM prefers to continue assigning this work to its employees, and BSI, which has a contract that required Otis to subcontract the metal refinishing work, clearly also prefers that it be performed (on its expensive bronze interiors) by qualified professional metals refinishers.

There has been a long history of past practice of MAM performing metal refinishing work on elevators. As Vice President Donat testified, there has always been a strong connection between MAM and the elevator companies since MAM first started thirty years ago. (Tr. 134-35) The company regularly contracts with elevator companies, including Otis, to perform metal refinishing work on elevators. Otis Exhibit 4 was admitted into evidence which reflects MAM business records of its numerous contracts with elevator companies – specifically including the major member-employers of NEBA (ThyssenKrupp, KONE, Otis and Schindler) for metal refinishing work – just within the last three year. These engagements include metal refinishing work on elevators in Missouri, Georgia, North and South Carolina, Florida, Texas and throughout the country. (Tr. 136-37) Indeed, MAM so regularly performs metal refinishing on elevators that it has invested in a “mock elevator” at its MAM Tech training facility in order to

allow its new employees to practice metal refinishing. MAM trains employees on a “mock elevator” precisely because elevator metal refinishing is such an integral part of its business.

In contrast, there is no similar record of the Union ever performing this type of metal refinishing on bronze (or any other metal). Clearly, Otis prefers that MAM continue to perform metals refinishing so that Otis can do what its employees actually do best: install, modernize, repair and service elevators and escalators. Otis is not in the business of refinishing architectural bronze. Indeed, Modernization Superintendent Philipot and Senior Regional Field Operations Manager Staggs both testified that, in every instance of which they are aware of metal refinishing being performed on an elevator at an Otis modernization jobsite, that work was subcontracted to a professional metals refinishing company.

Therefore, employer preference favors an award of the work to MAM employees.

## **5. Economy And Efficiency Of Operations**

The skills of an Elevator Constructor include mechanical and electrical skills that are admirable – but they are different skills which are simply not helpful in refinishing bronze. (Tr. 168) MAM invests heavily in the training of its employees to perform metals refinishing work. As MAM Vice President Donat testified, if MAM had to use untrained Local 3 employees to refinish bronze on elevators it would be economically devastating and inefficient:

We would be basically starting a new company. We would be starting from scratch. You know, it would be an embarrassment to our customers. Our reputation would be gone because we would send them out to finish the work, and they absolutely can't do that work. So it would be very difficult to stay in business.

(Tr. 153-54) As MAM Vice President Donat explained, these problems are not an affront to the Elevator Constructors, but rather, the reality that they are not trained to perform bronze refinishing work. (Tr. 172)

Clearly, economy and efficiency of operations is a factor that favors awarding bronze refinishing work to employees of MAM. Thus, even though Elevator Mechanics are on the job, their lack of training and experience in performing the work in dispute would make it inefficient to use them over the MAM employees.

### **III. CONCLUSION**

For the reasons set forth above, the Board should award the disputed work of metal refinishing including the bronze refinishing work to the employees of MAM, not Local 3.

Dated: September 1, 2015

Respectfully submitted,

**DOWNES RACHLIN MARTIN PLLC**

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**NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of:**

**INTERNATIONAL UNION OF ELEVATOR  
CONSTRUCTORS, LOCAL 3, AFL-CIO**

**Respondent,**

**Case 14-CD-156706**

**And;**

**NATIONAL ELEVATOR BARGAINING  
ASSOCIATION,**

**Charging Party.**

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**Statement of Service**

I hereby attest that the foregoing document was served via electronic mail to the following on September 1, 2015:

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